

1 MORGAN, LEWIS & BOCKIUS LLP  
JOHN S. BATTENFELD, SBN 119513  
2 JILL A. PORCARO, SBN 190412  
300 South Grand Avenue  
3 Twenty-Second Floor  
Los Angeles, CA 90071-3132  
4 Tel: 213.612.2500  
Fax: 213.612.2501  
5 email: [jbattenfeld@morganlewis.com](mailto:jbattenfeld@morganlewis.com)  
email: [jporcaro@morganlewis.com](mailto:jporcaro@morganlewis.com)

6 MORGAN, LEWIS & BOCKIUS LLP  
7 JENNIFER WHITE-SPERLING, SBN 166504  
5 Park Plaza, Suite 1750  
8 Irvine, CA 92614  
Tel: 949.399.700  
9 Fax: 949.399.7001  
email [jwhitesperling@morganlewis.com](mailto:jwhitesperling@morganlewis.com)

10 Attorneys for Defendants New York Life Insurance  
11 Company and New York Life Insurance and  
12 Annuity Corporation

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

15 OLGA ORTMANN, as an individual  
16 and on behalf of all others similarly  
situated,

17 Plaintiff,

18 v.

19 NEW YORK LIFE INSURANCE  
20 COMPANY, a corporation; NEW  
YORK LIFE INSURANCE AND  
21 ANNUITY CORPORATION, a  
corporation; and DOES 1 through 20,  
22 inclusive,

23 Defendants.

Case No. 3:07-CV-02506-WHA

**DECLARATION OF JILL A.  
PORCARO IN SUPPORT OF  
DEFENDANTS' MOTION TO STAY  
OR TRANSFER THIS ACTION, OR,  
IN THE ALTERNATIVE, TO  
DISMISS PLAINTIFF'S SECOND,  
FOURTH, AND SIXTH THROUGH  
TWELFTH CAUSES OF ACTION  
PURSUANT TO THE "FIRST-TO-  
FILE" RULE**

Judge: Hon. William Alsup  
Date: July 5, 2007  
Time: 8:00 a.m.  
Courtroom: 9, 19th Floor

**DECLARATION OF JILL A. PORCARO**

I Jill Ann Porcaro declare as follows:

1. I am an attorney licensed to practice law before all courts in the State of California and I am admitted to practice in this Court. I am an associate with Morgan, Lewis & Bockius LLP, attorneys for Defendants New York Life Insurance Company and New York Life Insurance and Annuity Corporation ("Defendants") in this action brought by Plaintiff Olga Ortmann ("Ortmann"). I have personal knowledge of the following facts and could and would testify competently if called to do so.

2. Attached hereto as Exhibit "A" is a true and correct copy of the Complaint filed on or about December 11, 2006, in the matter of: *Justin Opyrchal v. New York Life Insurance Company, Inc., New York Life and Heal Insurance Company, Inc., New York Life Insurance and Annuity Corporation, Inc.*, Case No. BC363208, in the Superior Court for the State of California, County of Los Angeles (hereinafter referred to as the "*Opyrchal* Action").

3. Defendants removed the *Opyrchal* Action to the U.S. District Court for the Central District of California on January 22, 2007. Attached hereto as Exhibit "B" is a true and correct copy of the Notice of Removal filed in the *Opyrchal* Action.

4. On April 13, 2007, the Central District Court, Judge Valerie Baker-Fairbank Presiding, dismissed Opyrchal's prayer for punitive damages, injunctive relief, and disgorgement of profits pursuant to Defendants' Motion to Strike. A true and correct copy of the Court's Order is attached hereto as Exhibit "C."

5. Plaintiff Justin Opyrchal filed a first Amended Complaint in the *Opyrchal* Action on or about May 11, 2007. A true and correct copy of the First Amended Complaint filed in the *Opyrchal* Action is attached hereto as Exhibit "D."

6. On or about March 26, 2006, Plaintiff Ortmann filed this action in Superior Court for the State of California, for the County of Alameda, Case No.

1 07317476 (hereinafter referred to as the "*Ortmann* Action"). Attached hereto as  
2 Exhibit "E" is a true and correct copy of the Complaint filed by Plaintiff Ortmann.

3 7. On May 10, 2007, Defendants removed the *Ortmann* Action to the  
4 United States District Court for the Northern District of California, Case No. 3:07-  
5 CV-02506.

6 I declare the foregoing is true and correct under penalty of perjury of the laws  
7 of the United States and the State of California.

8 Executed this 24th day of May, 2007, in Los Angeles, California.

9  
10 By /s/ JILL A. PORCARO  
11 Jill A. Porcaro  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28